

1 Todd M. Friedman (SBN 216752)
2 Adrian R. Bacon (SBN 280332)
3 Meghan E. George (SBN 274525)
4 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
5 21550 Oxnard St., Suite 780
6 Woodland Hills, CA 91367
7 Phone: 877-206-4741
8 Fax: 866-633-0228
9 tfriedman@toddflaw.com
10 abacon@toddflaw.com
11 mgeorge@toddflaw.com
12 *Attorneys for Plaintiff*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10) Case No. '16CV2490 JAH JLB
11 RON RAMOS, individually and on)
12 behalf of all others similarly situated,) **CLASS ACTION**
13)
14 Plaintiff,) **COMPLAINT FOR VIOLATIONS**
15) **OF:**
16 vs.)
17 ALL WEB LEADS, INC., DBA) 1. NEGLIGENT VIOLATIONS
18 BANKRATEINSURANCE.COM, and) OF THE TELEPHONE
19 DOES 1 through 10, inclusive, and each) CONSUMER PROTECTION
of them,) ACT [47 U.S.C. §227(b)]
20) 2. WILLFUL VIOLATIONS
Defendant.) OF THE TELEPHONE
21) CONSUMER PROTECTION
22) ACT [47 U.S.C. §227(b)]
23) 3. NEGLIGENT VIOLATIONS
24) OF THE TELEPHONE
25) CONSUMER PROTECTION
26) ACT [47 U.S.C. §227(c)]
27) 4. WILLFUL VIOLATIONS
28) OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

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DEMAND FOR JURY TRIAL

1 Plaintiff RON RAMOS (“Plaintiff”), individually and on behalf of all others
 2 similarly situated, alleges the following upon information and belief based upon
 3 personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
 6 similarly situated seeking damages and any other available legal or equitable
 7 remedies resulting from the illegal actions of ALL WEB LEADS, INC., DBA
 8 BANKRATEINSURANCE.COM (“Defendant”), in negligently, knowingly,
 9 and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of
 10 the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and
 11 related regulations, specifically the National Do-Not-Call provisions, thereby
 12 invading Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
 15 a resident of California, seeks relief on behalf of a Class, which will result in at
 16 least one class member belonging to a different state than that of Defendant, a
 17 Delaware company headquartered in Texas. Plaintiff also seeks up to \$1,500.00 in
 18 damages for each call in violation of the TCPA, which, when aggregated among a
 19 proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal
 20 court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold
 21 under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court
 22 has jurisdiction.

23 3. Venue is proper in the United States District Court for the Southern
 24 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
 25 because Defendant does business within the State of California and Plaintiff resides
 26 within the County of San Diego.

27 **PARTIES**

28 4. Plaintiff, RON RAMOS (“Plaintiff”), is a natural person residing in

1 Whittier, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

2 5. Defendant, ALL WEB LEADS, INC., DBA
3 BANKRATEINSURANCE.COM (“Defendant”) is a company in the business of
4 connecting consumers with insurance providers and providing consumers with a
5 place to shop and compare insurance policies, and is a “person” as defined by *47*
6 *U.S.C. § 153 (39)*.

7 6. The above named Defendant, and its subsidiaries and agents, are
8 collectively referred to as “Defendants.” The true names and capacities of the
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
10 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
11 names. Each of the Defendants designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
13 Complaint to reflect the true names and capacities of the DOE Defendants when
14 such identities become known.

15 7. Plaintiff is informed and believes that at all relevant times, each and
16 every Defendant was acting as an agent and/or employee of each of the other
17 Defendants and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendants.
19 Plaintiff is informed and believes that each of the acts and/or omissions complained
20 of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

22 8. Beginning in or around October 2015, Defendant contacted Plaintiff
23 on Plaintiff’s cellular telephone number ending in -1554, in an attempt to solicit
24 Plaintiff to purchase Defendant’s services.

25 9. Defendant used an “automatic telephone dialing system”, as defined
26 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

27 10. Defendant contacted or attempted to contact Plaintiff from telephone
28 numbers (760) 666-6544 on, but not limited to, October 17, 2015 and May 5, 2016.

11. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

14. Further, Plaintiff's cellular telephone number ending in -1554 was added to the National Do-Not-Call Registry on or about December 4, 2004.

15. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

16. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

17. Defendant continued to call Plaintiff in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

18. Upon information and belief, and based on Plaintiff's experiences, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, “The Classes”). The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from

1 Defendant to said person's cellular telephone made
2 through the use of any automatic telephone dialing
3 system or an artificial or prerecorded voice and such
4 person had not previously consented to receiving such
5 calls within the four years prior to the filing of this
6 Complaint

7 20. The class concerning the National Do-Not-Call violation (hereafter
8 "The DNC Class") is defined as follows:

9 All persons within the United States registered on the National
10 Do-Not-Call Registry for at least 30 days, who had not granted
11 Defendant prior express consent nor had a prior established business
12 relationship, who received more than one call made by or on behalf of
13 Defendant that promoted Defendant's products or services, within any
14 twelve-month period, within four years prior to the filing of the
15 complaint.

16 21. Plaintiff represents, and is a member of, The ATDS Class, consisting
17 of all persons within the United States who received any collection telephone calls
18 from Defendant to said person's cellular telephone made through the use of any
19 automatic telephone dialing system or an artificial or prerecorded voice and such
20 person had not previously not provided their cellular telephone number to
21 Defendant within the four years prior to the filing of this Complaint.

22 22. Plaintiff represents, and is a member of, The DNC Class, consisting
23 of all persons within the United States registered on the National Do-Not-Call
24 Registry for at least 30 days, who had not granted Defendant prior express consent
25 nor had a prior established business relationship, who received more than one call
26 made by or on behalf of Defendant that promoted Defendant's products or services,
27 within any twelve-month period, within four years prior to the filing of the
28 complaint.

29 23. Defendant, its employees and agents are excluded from The Classes.
30 Plaintiff does not know the number of members in The Classes, but believes the

1 Classes members number in the thousands, if not more. Thus, this matter should
 2 be certified as a Class Action to assist in the expeditious litigation of the matter.

3 24. The Classes are so numerous that the individual joinder of all of its
 4 members is impractical. While the exact number and identities of The Classes
 5 members are unknown to Plaintiff at this time and can only be ascertained through
 6 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
 7 The Classes includes thousands of members. Plaintiff alleges that The Classes
 8 members may be ascertained by the records maintained by Defendant.

9 25. Plaintiff and members of The ATDS Class were harmed by the acts of
 10 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
 11 and ATDS Class members via their cellular telephones thereby causing Plaintiff
 12 and ATDS Class members to incur certain charges or reduced telephone time for
 13 which Plaintiff and ATDS Class members had previously paid by having to retrieve
 14 or administer messages left by Defendant during those illegal calls, and invading
 15 the privacy of said Plaintiff and ATDS Class members.

16 26. Common questions of fact and law exist as to all members of The
 17 ATDS Class which predominate over any questions affecting only individual
 18 members of The ATDS Class. These common legal and factual questions, which
 19 do not vary between ATDS Class members, and which may be determined without
 20 reference to the individual circumstances of any ATDS Class members, include,
 21 but are not limited to, the following:

22 a. Whether, within the four years prior to the filing of this
 23 Complaint, Defendant made any telemarketing/solicitation call
 24 (other than a call made for emergency purposes or made with
 25 the prior express consent of the called party) to a ATDS Class
 26 member using any automatic telephone dialing system or any
 27 artificial or prerecorded voice to any telephone number
 28 assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

27. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

28. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

29. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to

1 place solicitation calls to Plaintiff or the DNC Class members'
2 telephones;

3 c. Whether Plaintiff and the DNC Class member were damaged
4 thereby, and the extent of damages for such violation; and
5 d. Whether Defendant and its agents should be enjoined from
6 engaging in such conduct in the future.

7 30. As a person that received numerous solicitation calls from Defendant
8 within a 12-month period, who had not granted Defendant prior express consent
9 and did not have an established business relationship with Defendant, Plaintiff is
10 asserting claims that are typical of the DNC Class.

11 31. Plaintiff will fairly and adequately protect the interests of the members
12 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
13 class actions.

14 32. A class action is superior to other available methods of fair and
15 efficient adjudication of this controversy, since individual litigation of the claims
16 of all Classes members is impracticable. Even if every Classes member could
17 afford individual litigation, the court system could not. It would be unduly
18 burdensome to the courts in which individual litigation of numerous issues would
19 proceed. Individualized litigation would also present the potential for varying,
20 inconsistent, or contradictory judgments and would magnify the delay and expense
21 to all parties and to the court system resulting from multiple trials of the same
22 complex factual issues. By contrast, the conduct of this action as a class action
23 presents fewer management difficulties, conserves the resources of the parties and
24 of the court system, and protects the rights of each Classes member.

25 33. The prosecution of separate actions by individual Classes members
26 would create a risk of adjudications with respect to them that would, as a practical
27 matter, be dispositive of the interests of the other Classes members not parties to
28 such adjudications or that would substantially impair or impede the ability of such

non-party Class members to protect their interests.

34. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

35. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-34.

36. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

37. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

38. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

39. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-38.

40. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

41. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

42. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

43. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-42.

44. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227(c)(5)*.

45. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

46. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

47. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-46.

48. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227(c)(5)*.

49. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

50. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

51. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 5th Day of October, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff